

## **ARTICLE VI. - ENVIRONMENTAL QUALITY REVIEW**

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### **Sec. 80-6.1. - Purpose.**

The general purpose of the State Environmental Quality Review Act is to incorporate the consideration of environmental factors into planning, review and decision-making processes of local government at the earliest possible time. To this end, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant effect on the environment, and, if it is determined that the action may have a significant effect on the environment, prepare or request an environmental impact statement. Article 8 of the New York Environmental Conservation Law and part 617 of the New York Code of Rules and Regulations (NYCRR) and any subsequent amendments thereto are hereby adopted by reference. A summary discussion of the basic SEQR review procedures follows to supplement 6 NYCRR part 617.

(Ord. No. 7802, 4-28-04)

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### **Sec. 80-6.2. - Process completion required.**

Where required under state law, completion of the SEQR process shall be required before an application is deemed complete. No final action shall be taken on an application until it has complied with SEQR. Therefore, time deadlines for review and decision-making on applications shall not begin until the SEQR process has been completed.

(Ord. No. 7802, 4-28-04)

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### **Sec. 80-6.3. - Applicability.**

- a) Projects or physical activities which meet at least one (1) of the following criteria are subject to review under SEQR.

- i. Are directly undertaken by the city;
  - ii. Involve funding by the city;
  - iii. Require a discretionary permit from the city or its appointed boards.
- b) If the proposed action does not require a discretionary decision there is no requirement for review under SEQR.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.4. - Classification of action.**

If a proposed action is subject to review under SEQR, the first step is to classify the action into one (1) of four (4) categories.

- a) Classes of action requiring no further review under SEQR.
  - i. Exempt. These are actions such as maintenance, repair, emergency, ministerial action or nondiscretionary permitting which do not require further review. See section 617.2(q) for the list of exempt actions.
  - ii. Type II. An action that never produces significant environmental impacts and does not require the preparation of a determination of significance or a draft environmental impact statement (EIS). Type II actions are defined by the list in section 617.5.
- b) Classes of action which require further review under SEQR.
  - i. Type I. An action that is likely to produce significant environmental impacts and may require the preparation of a draft environmental impact statement. At a minimum, a full environmental assessment form (EAF) must be completed and determination of significance made. Type I actions are defined by the list in 6 NYCRR 617.4, or any amendment or successor regulation or law adopted thereto.
  - ii. Unlisted. All actions which are not type I, type II exempt or excluded are considered unlisted. At a minimum, an unlisted action requires that a short EAF be completed and a determination of significance made which may require the preparation of a draft environmental impact statement (EIS).

(Ord. No. 7802, 4-28-04; Ord. No. 8038, 11-9-05)

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#### **Sec. 80-6.5. - Environmental assessment forms.**

An EAF must be completed for all type I and unlisted actions.

- a) Type I actions. A full EAF must be prepared for all type I actions. The project sponsor/applicant completes part 1 of the form and submits it to an involved agency. When the lead agency is established, that agency is responsible for completing parts 2 and 3 of the full EAF.
- b) Unlisted actions. A short EAF must, at a minimum, be completed for all unlisted actions. The project sponsor/applicant completes part 1 of the form and submits it to an involved agency. When the lead agency is established, that agency is responsible for completing parts 2 and 3 of the short EAF. An agency may require a full EAF if the short EAF will not provide sufficient information to assess the environmental impact of the proposed action.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.6. - Lead agency.**

- a) If there is only one (1) agency approving, funding or directly undertaking an action, that agency is automatically the lead agency. If there are two (2) or more involved agencies, a lead agency must be established by agreement of the agencies within thirty (30) calendar days. If the lead agency cannot be agreed on, any of the involved agencies or the applicant can petition the New York State Department of Environmental Conservation Commissioner to resolve the dispute and designate the lead agency.
- b) For zoning or subdivision actions reviewed by the city, the following bodies shall be the lead agency, unless otherwise agreed to pursuant to state law.
  - i. Map or text amendments to this chapter: City council.
  - ii. Site plan and subdivision applications: Planning board.
  - iii. Variances: Zoning board of appeals.
  - iv. Special use permits: Zoning board of appeals.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.7. - Determination of significance.**

- a) [Determination of significance.] For type I and unlisted actions the lead agency has twenty (20) calendar days to make its determination of significance. If the lead agency finds that it does not have sufficient information to make this determination, it shall request that the applicant provide it.
- b) [Considerations.] In determining significance the lead agency shall consider:

- i. The whole action;
- ii. The EAF and any other information provided by the applicant;
- iii. Any comments from involved agencies;
- iv. The criteria in section 617.11;
- v. Public comments.

c) Negative declaration.

- i. A negative declaration means that the lead agency has determined that the proposed action will not have a significant effect on the environment and a draft EIS will not be prepared. Every negative declaration shall identify the relevant areas of environmental concern; analyze the identified concerns to determine if there will be a significant impact on the environment; and document the determination, in writing, showing why the environmental concerns will not be significant. A model negative declaration form can be found as appendix F of part 617.
- ii. The lead agency must maintain a file, readily accessible to the public, containing the EAF and the negative declaration. For a type I action, the lead agency must additionally comply with filing and notice requirements described in section 617.10.

d) Positive declaration. If the lead agency determines, after review of the EAF, that the proposed action has the potential for a significant impact on the environment or community character, it shall prepare and file a notice of positive declaration and may require the preparation of a draft environmental impact statement (EIS) that includes information specified in section 617.14. A model positive declaration form can be found as appendix E of part 617.

e) [Draft EIS.] The applicant has the right to prepare the draft EIS. If the applicant refuses to prepare the draft EIS, the lead agency has the option of preparing the draft EIS for the applicant or tabling the proposed action for lack of a complete application. If the lead agency decides to prepare the draft EIS, it may hire a consultant and charge the applicant a fee to recover the direct costs of preparation.

(Ord. No. 7802, 4-28-04)

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**Sec. 80-6.8. - Acceptance of draft environmental impact statement.**

After receiving a draft EIS, the lead agency has 30 days to determine whether the document is adequate for public review in terms of scope and content as described in section 617.14. If the lead agency decides that the draft EIS is not adequate, it shall return the document to the applicant with a written identification of the deficiencies. If the lead agency determines that the draft EIS is adequate, it shall issue a notice of completion of a draft EIS and file it as prescribed in section 617.10. A sample notice of completion of a draft EIS form is included as appendix G of part 617.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.9. - Public comment period.**

The notice of completion of a draft EIS starts the public comment period that must be a minimum of 30 days, during which all concerned parties are encouraged to offer their comments to the lead agency. The public comment period must continue at least ten days following a public hearing, if one is held.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.10. - Public hearing.**

When the lead agency accepts the draft EIS, it must decide whether to hold a public hearing or not. If a hearing is held, the lead agency must comply with notice and filing requirements identified in section 617.10. A hearing must provide at least 14 days of public notice and must start within 60 days from the date of filing the notice of completion of the draft EIS.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.11. - Notice of completion of final environmental impact statement.**

Upon completion or receipt of the final EIS the notice of completion of the final EIS shall be prepared and filed as described in section 617.10. A sample notice of a completion of the final EIS form is included as appendix H of part 617.

(Ord. No. 7802, 4-28-04)

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#### **Sec. 80-6.12. - Findings statement.**

All involved agencies shall prepare their own SEQR findings statement after the final EIS has been filed and before the agency makes a decision. The lead agency shall prepare its findings statement within ten to 30 days following the filing of the notice of completion of the final EIS.

The findings statement should discuss the balance of environmental impacts versus the needs and benefits of the proposed action.

- a) Positive findings statement. A positive findings statement means that the lead agency has determined that the proposed action is approvable after consideration of the final EIS and demonstrates that the action chosen is one that minimizes or avoids environmental impacts to the maximum extent practicable in terms of location, layout and design, scale or magnitude, timing and use.
- b) Negative findings statement. If the action is not approvable, the lead agency shall make a negative findings statement documenting the reasons for the denial. A sample findings statement form may be found as appendix I of part 617. Findings of each agency must be filed with all other involved agencies and the applicant.

(Ord. No. 7802, 4-28-04)